



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 12 2024

Dear Tribal Leader:

The Department of the Interior (Department) is taking this opportunity to consult on whether it should reconsider its prior decision to ban re-petitioning under 25 CFR part 83 (Part 83) – the regulations establishing the process and criteria for how the Department administratively acknowledges Indian Tribes.

Since 1994, the Part 83 regulations have included an express ban on re-petitioning. In a 2014 Notice of Proposed Rulemaking (NPRM), the Department proposed giving previously denied petitioners an opportunity to re-petition, subject to several conditions. However, in a 2015 Final Rule revising Part 83, the Department ultimately decided to retain the ban.

In 2020, in litigation initiated by two previously denied petitioners, two federal district courts in *Chinook Indian Nation v. Bernhardt* and *Burt Lake Band of Ottawa and Chippewa Indians v. Bernhardt* held that the Department's stated reasons for retaining the ban, as articulated in the 2015 Final Rule, were arbitrary and capricious under the Administrative Procedure Act. Both courts remanded the ban to the Department for further consideration.

The Department initially proposed continuing the ban on re-petitioning and conducted two tribal consultations and one listening session in June 2022. After reviewing the written comments, as well as the transcripts of the consultation and listening sessions, the Department engaged in further deliberation and is now proposing to create a limited exception to the ban through implementation of a re-petition authorization process. The re-petition authorization would require an unsuccessful petitioner that seeks to re-petition to plausibly allege that the outcome of the previous, negative final determination would change to positive on reconsideration based on one or both of the following: (1) a change in part 83 (from the 1978 or 1994 version of the Part 83 regulations to the 2015 version of the regulations); and/or (2) new evidence.

The Department seeks Tribal leader input on this matter and will conduct two virtual consultation sessions listed below. Oral and written comments will be accepted. The Department will also host a listening session for present, former, and prospective petitioners.

Please register in advance for any consultation session you plan on attending. After registering, you will receive a confirmation email containing information about joining the meeting. Please note that these Tribal consultations will be closed to the press and the public to protect confidential information that may be discussed during the sessions.

I look forward to speaking with you at one or more of the following sessions:

August 19, 2024

3:00 p.m. – 5:00 p.m. Eastern Time (US and Canada)

Please register in advance at:

<https://www.zoomgov.com/meeting/register/vJltc-qqqTsiH8cfOkrLr2UUOwkOq199siI>

September 3, 2024

1:00 p.m. – 3:00 p.m. Eastern Time (US and Canada)

Please register in advance at:

<https://www.zoomgov.com/meeting/register/vJltduGorjsoHgUodFTHwBMMQNIw9RwluIA>

Listening Session for Present, Former, And Prospective Petitioners

September 5, 2024

3:00 p.m. – 5:00 p.m. Eastern Time (US and Canada)

Please register in advance at:

<https://www.zoomgov.com/meeting/register/vJlscuysqz8tGcSUvtGt7ETrNdXAQJScrXg>

You may provide written comments to consultation@bia.gov by 11:59 pm ET on September 13, 2024. If you have questions regarding this effort, please contact Stephanie Sfiridis at stephanie.sfiridis@indianaffairs.gov.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs